

**HUME HOUSE
Body Corporate 83149**

**Notice of the
2025 EXTRAORDINARY GENERAL MEETING**

To be held at
YPM Offices, Level 9, 186 Willis Street, Wellington
and via Zoom Conference

Date:
Monday, 4 August 2025 at 12:00pm

Website: www.ypm.co.nz, select "Member Login" Username: bc83149 Password: 8o745tfdb

**2025 EXTRAORDINARY GENERAL MEETING OF
HUME HOUSE BODY CORPORATE 83149**

Please find enclosed:

- Notice & Agenda
- Proxy Form
- Postal Voting Form
- Refurbishment Cashflow
- Background Paper
- Final Contract Document

Attached to this Notice of Meeting is a Proxy Form that should be completed if:

- You are the legal representative of an owner, or
- You are unable to attend the meeting and wish to appoint a proxy.

As owners, you are strongly urged to attend or submit your proxy in order to ensure a quorum is attained and the meeting can proceed.

Please see the signing instructions contained in the Proxy and Postal Voting Forms.

In the meantime, should you have any questions regarding the body corporate please do not hesitate to contact me.

We look forward to seeing you.

Yours sincerely



Dricky Croucamp
Your Property Matters Ltd
Body Corporate Manager

28 July 2025

2025 EXTRAORDINARY GENERAL MEETING OF HUME HOUSE BODY CORPORATE 83149

AGENDA:

1.0 Meeting Formalities

- 1.1 Present
- 1.2 Apologies
- 1.3 Proxies
- 1.4 Postal Votes
- 1.5 Quorum

2.0 General Business

2.1 Refurbishment Project

Ordinary Resolution: To accept the offer from HighRise Maintenance Limited to complete the works to the Hume House facade and windows for the sum of \$348,101 .19 including GST.

Ordinary Resolution: To approve the allowance of a "General Provisional Cost Sum" for \$13,800, including GST to be expended only on the approval of the body Corporate Committee. Such approval is to be sought by email from the Committee members as required.

Ordinary Resolution: To approve the provisional sum of \$19,550.00, including GST, from maintenance funds, for the replacement of broken and cracked glass during the refurbishment process. This work is to be undertaken by the approved Hume House glaziers, C & D Glass of Wellington, or other such approved party as may be required. All expenditure to be approved by the Body Corporate Committee.

Ordinary Resolution: To note the projected cash flow expenditure required to complete the works and approve the setting aside of the funds as recommended by the Refurbishment Sub-Committee to the Body Corporate Committee.

Notes:

1. Please note that Unit Owners may not vote unless all body corporate levies and other amounts that are from time to time payable to the body corporate in respect of the Unit have been paid.
2. Voting procedures:

Section 97: Counting of votes for ordinary resolution subject to request for poll

- (1) This section applies if a motion is to be decided by ordinary resolution, subject to a request for a poll, at a general meeting of a body corporate.
- (2) One vote only may be exercised for each principal unit.
- (3) A subsidiary body corporate representative has 1 vote for the principal unit that was subdivided to create the subsidiary unit title development.
- (4) For a body corporate meeting to pass an ordinary resolution, a majority in number of the eligible voters who vote on the resolution must vote in favour of the resolution.
- (5) An eligible voter whose interest in his or her unit is subject to a registered mortgage must, if required by that mortgage, obtain the consent of the mortgagee before exercising a vote.
- (6) An ordinary resolution passed under this section is subject to a request for a poll under [section 99](#) and the motion being confirmed by that poll.

Section 98: Counting of votes for special resolution subject to request for poll

- (1) This section applies if a motion is to be decided by special resolution, subject to a request for a poll, at a general meeting of a body corporate.
- (2) One vote only may be exercised for each principal unit.
- (3) A subsidiary body corporate representative has 1 vote for the principal unit that was subdivided to create the subsidiary unit title development.
- (4) For a special resolution to pass, 75% of the eligible voters who vote on the resolution must vote in favour of the resolution.
- (5) An eligible voter whose interest in his or her unit is subject to a registered mortgage must, if required by that mortgage, obtain the consent of the mortgagee before exercising a vote.
- (6) A special resolution passed under this section is subject to a request for a poll under [section 99](#) and the motion being confirmed by that poll.

Section 99: Request for poll

- (1) A poll may be requested by any eligible voter or their proxy who votes on a motion passed by ordinary resolution under [section 97](#) or by special resolution under [section 98](#).
- (2) The eligible voter or their proxy must request the poll in person at the meeting or by audio link, audiovisual link, or other remote access facility.

Section 100: Counting of votes if poll requested

- (1) This section applies if—
 - (a) a motion is passed by ordinary resolution or special resolution; and
 - (b) a poll is properly requested.
- (2) One vote only may be exercised for each principal unit and only those who voted on the motion under [section 97](#) or [98](#) are entitled to vote.
- (3) For the motion to pass by ordinary resolution where a poll is requested, a majority of the ownership interest represented by those voting must vote in favour of the motion.
- (4) For the motion to pass by special resolution where a poll is requested, 75% of the ownership interest represented by those voting must vote in favour of the motion.
- (5) The result of any poll is the resolution of the general meeting.

3. Procedure if no quorum present:

Regulation 13: Quorum

- (1) A general meeting of a body corporate may proceed without a quorum if the persons who have cast postal votes together with those present are entitled to exercise the voting power in respect of not less than 25% of the principal units in the unit title development.
- (2) If a quorum is not reached at a general meeting of a body corporate, and subclause (1) does not apply, the following procedure applies:
 - (a) the meeting must be adjourned until the same day 1 week later; and

- (b) the reconvened meeting must be held at the same time and place, unless the chairperson has notified all unit owners of a change to the time or place (or both) at least 3 days before the reconvened meeting is due to take place; and
- (c) the reconvened meeting must proceed, whether a quorum exists or not.

4. Ownership and Utility Interests

Section 38: Ownership interest

- (3) The ownership interest is used to determine a range of matters, including, but not limited to,—
- (a) the beneficial interest of the owner of the principal unit in the common property;
 - (b) the share of the owner of the principal unit in the value of any buildings, fixtures, and other improvements in relation to leasehold land;
 - (c) the voting rights of the owner of the principal unit when a poll is requested under section 99;
 - (d) the share of the owner of the principal unit in the underlying fee simple in the land on the cancellation of the unit plan;
 - (e) the extent of the obligation of the owner of the principal unit in respect of contributions levied by the body corporate under section 121 in respect of any capital improvement fund;
 - (f) the rights of the owner of the principal unit in relation to a distribution of any surplus money of a capital improvement fund under section 131;
 - (g) the extent of the obligation of the owner of the principal unit for payment of ground rental under section 87;
 - (h) the extent of the liability of the owner of the principal unit for damages and costs under section 142.

Section 39: Utility interest (other than for future development units)

- (3) The utility interest is used to determine a range of matters including, but not limited to,—
- (a) the extent of the obligation of the owner of the principal unit in respect of contributions levied by the body corporate under section 121 in respect of the long-term maintenance fund, the optional contingency fund, and the operating account;
 - (b) the rights of the owner of the principal unit in relation to a distribution of any surplus money in the long-term maintenance fund, the optional contingency fund, or the operating account, or personal property of the body corporate under section 131.

Proxy Appointment Form

As per Section 102(3), Unit Titles Act 2010

To: Marlene Tvrdeic (marlene@ypm.co.nz)

Unit plan: DP 83149

Body Corporate Number: 83149 (Hume House)

Proxy appointment

We/I*, _____ [full name, address], being the owner/owners* of _____ [principal unit] and therefore an eligible voter within the meaning of section 96(1) of the Unit Titles Act 2010, appoint _____ [full name] as my/our* proxy for the purposes of the general meeting of the body corporate to be held on 4 August 2025.

**Select one.*

If the general meeting is adjourned and reconvened, this proxy appointment is valid for the purposes of the reconvened meeting.

Motions

Motion	Type of resolution	Direction On Resolution
That the offer from HighRise Maintenance Limited to complete the works to the Hume House facade and windows for the sum of \$348,101.19, including GST, is accepted.	Ordinary	
That the allowance of a "General Provisional Cost Sum" for the sum \$13,800, including GST, be approved, to be expended only on the approval of the body Corporate Committee. Such approval is to be sought by email from the Committee members as required.	Ordinary	
That the provisional sum of \$19,550.00, including GST, from maintenance funds, be approved.	Ordinary	
That the projected cash flow expenditure required to complete the works be noted and approve the setting aside of the funds as recommended by the Refurbishment Sub-Committee to the Body Corporate Committee.	Ordinary	

Date: ____ / ____ / ____

Signature of eligible voter: _____

Notes

1. This proxy appointment expires at the end of the general meeting referred to in the form or, if that meeting is adjourned, the end of the reconvened meeting.
2. The full text of motions is contained in the notice of general meeting, a copy of which should be provided to the proxy.
3. Your proxy may not vote unless all body corporate levies, and other amounts that are owing in respect of your unit, have been paid.
4. If the unit owner is a body corporate or an unincorporated body, the representative (recorded in the register of unit owners) of the unit owner must sign the form.
5. If the unit is owned by more than 1 person, every owner must sign the form.
6. If the unit is owned by more than 1 person, one of the unit owners may be appointed as proxy.
7. The chairperson of the meeting is not required to ensure that your proxy follows any direction on resolution set out in the form.
8. When entering a direction on resolution, you can use the statements such as (for example):
 - I am for (which means you support)
 - I am against (which means you do not support)
 - I abstain (which means you decline to vote either for or against the motion)
9. It is recommended that you provide the instructions in this form to your proxy before delivering it to the body corporate in the manner required.

Postal Voting Form

As per [Section 103](#), Unit Titles Act 2010

To: Marlene Tvrdeic (marlene@ypm.co.nz)

Unit plan: DP 83149

Body Corporate Number: 83149 (Hume House)

Instructions

You are entitled to vote at the body corporate meeting to be held on Monday 4 August 2025 by casting a postal vote. The motions to be decided at the meeting are summarised in the table below and more particularly set out in the notice of meeting. If you intend to cast a postal vote, you must indicate your vote in the final column of the table and return the form to Your Property Matters Limited so that it is received by Friday 1 August 2025.

Postal vote

We/I*, _____

_____ [full name, address],

being the owner/owners* of _____ [unit number] and therefore an eligible

voter within the meaning of [section 96\(1\)](#) of the Unit Titles Act 2010, intend to cast the

following postal vote(s) at the meeting of the body corporate to be held on Monday 4

August 2025 at the YPM Offices, Level 9, 186 Willis Street, Wellington and via Zoom

Conference.

**Select one.*

Motion	Type of resolution	Instructions on voting procedure	Vote
That the offer from HighRise Maintenance Limited to complete the works to the Hume House facade and windows for the sum of \$348,101.19, including GST, is accepted.	Ordinary		
That the allowance of a "General Provisional Cost Sum" for the sum \$13,800, including GST, be approved, to be expended only on the approval of the body Corporate Committee. Such approval is to be sought by email from the Committee members as required.	Ordinary		
That the provisional sum of \$19,550.00, including GST, from maintenance funds, be approved.	Ordinary		

That the projected cash flow expenditure required to complete the works be noted and approve the setting aside of the funds as recommended by the Refurbishment Sub-Committee to the Body Corporate Committee.	Ordinary		
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If the general meeting is adjourned and reconvened, this postal vote is valid for the purposes of the reconvened meeting.

Date: _____ / _____ / _____

Signature of eligible voter: _____

1. The body corporate completes the instructions section and the text of the motions. You should complete the postal vote section and the vote section.
2. Your postal vote will not be counted if anybody corporate levies, or other amounts that are payable in respect of your unit, are outstanding.
3. If a poll is requested, your ownership interest will be counted as part of the poll. If no poll is requested, your postal vote will be counted as 1 vote. You cannot request a poll.
4. If at the general meeting of the body corporate the wording of a motion is materially altered, your postal vote in relation to that motion will not be counted. It is the responsibility of the chairperson to decide what constitutes a material alteration. If you are concerned that your postal vote may not be counted as a result of an amendment to a motion, you should consider appointing a proxy to attend and vote at the meeting on your behalf.
5. If a quorum is not present at the general meeting of the body corporate, and regulation 13(1) of the Unit Titles Regulations 2011 does not apply, the meeting will be adjourned until the same day 1 week later and your postal vote will be counted at that meeting.
6. If the unit owner is a body corporate or an unincorporated body, the form must be signed by the representative (recorded in the register of unit owners) of the unit owner.
7. If the unit is owned by more than 1 person, every owner or his or her authorised representative must sign the form.

**HUME HOUSE
REFURBISHMENT CASHFLOW**

28-Jul-25

	May	June	July	August	September	October	November	December	January	Project Totals
Opening Balance	\$ 407,709.74	\$ 348,663.34	\$ 337,387.67	\$ 395,299.56	\$ 314,403.65	\$ 240,623.79	\$ 236,031.49	\$ 162,251.63	\$ 88,471.77	
Levies in			\$ 120,200.00			\$ 120,200.00			\$ 120,200.00	
Window Refurbishment										
Façade Maintenance				\$ 69,620.24	\$ 55,696.19	\$ 55,696.19	\$ 55,696.19	\$ 55,696.19	\$ 55,696.19	\$ 348,101.19
General PC Sum				\$ 2,760.00	\$ 2,760.00	\$ 2,760.00	\$ 2,760.00	\$ 2,760.00	\$ 2,760.00	\$ 13,800.00
Brocken & Cracked Glass				\$ 4,048.00	\$ 4,048.00	\$ 4,048.00	\$ 4,048.00	\$ 4,048.00	\$ 4,048.00	\$ 20,240.00
Current ACC Received	-\$ 609.70									
Curent ACC Paid	\$ 11,521.76									
BC Management Fee			\$ 5,724.02			\$ 5,724.02			\$ 5,724.02	
BC Management fees (additional)			\$ 5,600.80			\$ 5,600.80			\$ 5,600.80	
Insurance	\$ 36,858.67		\$ 36,858.67			\$ 36,858.67			\$ -	
Lift Contract			\$ 2,828.95			\$ 2,828.95				
Average Budgeted Expenditure	\$ 10,808.00	\$ 10,808.00	\$ 10,808.00	\$ 10,808.00	\$ 10,808.00	\$ 10,808.00	\$ 10,808.00	\$ 10,808.00	\$ 10,808.00	
Projected LTMP Expenditure	\$ 467.67	\$ 467.67	\$ 467.67	\$ 467.67	\$ 467.67	\$ 467.67	\$ 467.67	\$ 467.67	\$ 467.67	
Total Costs	\$ 59,046.40	\$ 11,275.67	\$ 62,288.11	\$ 80,895.91	\$ 73,779.86	\$ 124,792.30	\$ 73,779.86	\$ 73,779.86	\$ 85,104.68	
Closing Balance	\$ 348,663.34	\$ 337,387.67	\$ 395,299.56	\$ 314,403.65	\$ 240,623.79	\$ 236,031.49	\$ 162,251.63	\$ 88,471.77	\$ 123,567.09	
Project Cost including Contingences										\$ 382,141.19

Notes

1. HighRise quote itemisation:

2. Start date:

Pushed out to 1 September due to cashflow considerations

	Cash Flow							
	May	June	July	August	September	October	November	December
Opening balance	407709.74	347443.9433	336168.2767	394080.17	382804.5033	371528.8367	429440.73	418165.06
Levies in			120200.00			120200.00		
Current Acc Rec	-609.7							
Current Acc Pay	11521.76							
BC Mgmt Fee			5724.02			5724.02		
Insurance	36858.67		36858.67			36858.67		
BC Facilities Mgmt Fee			5600.8			5600.8		
Lift Contract Quarterly			2828.95			2828.95		
Average Budgeted Expenditure	10808.00	10808.00	10808.00	10808.00	10808.00	10808.00	10808.00	10808.00
Average Projected LTMP Expenditure	467.67	467.67	467.67	467.67	467.67	467.67	467.67	467.67
Closing balance	347443.94	336168.28	394080.17	382804.50	371528.84	429440.73	418165.06	406889.40

NOTE

Standard Budget Cashflow provided by YPM

Hume House Body Corporate Extraordinary General Meeting 4 August 2025

Reason for the EGM

The meeting has been called at the request of the Building Renovation Subcommittee that was established prior to the last AGM to look at the refurbishment of the tower block and steel windows. The Sub-Committee has completed its work and communicated this to the Body Corporate Committee for its review and feedback. The point has now been reached where a course of action has been agreed and the matter needs to go before the Body Corporate for consideration.

The Proposal

The Sub-Committee, after discussions with two parties, has settled on the proposal from HighRise Ltd, of Wellington, to complete repairs to the concrete façade, a repaint of the tower block and a refurbishment of the steel windows for the sum of \$348,101.19, including GST. As the Body Corporate is not GST registered, GST it is not recoverable and so represents a real cost to us.

In addition to this contract sum there are two provisional sums being:

1. General PC (Provisional Cost) Sum of \$13,800 including GST for the façade remediation to cover unforeseen costs. The façade and windows have been closely examined by the proposed contractor and the figure calculated after the inspection took place. The results of this inspection can be viewed on our website.
2. A provisional allowance of \$20,240 including GST for broken and cracked glass provided by C&D Glass, also of Wellington, who currently carry out work for Hume House as a preferred contractor.

Neither of these sums will be expended without the approval of the Body Corporate Committee.

The work will weather-proof the exterior of the building, ensure it remains structurally sound and improve the appearance of the building. Warranties will be provided by the contractor.

A copy of the proposed contract is attached for your information. The work is expected to take four months, weather permitting.

Cashflow planning and funding

A cashflow plan has been developed and this is attached for your information and approval. There is the cash available to complete the works over the time of the contract and sufficient left in place to go about the normal day to day business of the Body Corporate. This reflects the use of available cash from reserves and levy collections, with payments to the contractor staged to ensure that an adequate reserve of general working capital is retained in the Body Corporate bank accounts.

It is not anticipated that a special levy will be required to complete the works. Much of the work is deferred maintenance and it is appropriate to employ some of the maintenance funds to carry out the refurbishment. This should reflect in lower maintenance costs for the tower block for a period of time allowing us to attend to other outstanding matters over time.

Hume House Body Corporate Extraordinary General Meeting 4 August 2025

Work programme and considerations.

The work will involve several stages:

- Concrete remediation – repairs to minor concrete spalling and cracks (none structural).
- Remediation of steel window frames – rust treatment, putty repairs and reglazing where necessary.
- Exterior painting of window frames.
- Exterior painting of the concrete façade – with a flexible membrane product.

The work programmed to be undertaken will create noise and some potential disruptions to residents' daily routines. HighRise is an experienced contractor with a lot of experience in this area, as this is a typical work project for them. They will provide weekly work programme updates and keep residents informed when working on their levels. It won't be without some irritation, however that is the price we have to pay to complete the work and protect the asset. Highrise will not require day to day needs, like parking, and won't be requiring space to store materials. We do ask that in the interest of getting the work completed we co-operate to the fullest extent. If there are circumstances that require further consideration please let the project coordinator know. Contact details will be made available.

Approvals

A list of resolutions are provided with the agenda and these are up for discussion. Given the time available for the meeting we ask that you fully acquaint yourself with the documents and have questions ready for the asking. We would be happy to take prior questions and address these if you are unable to attend the EGM and to speed matters up. Also if there are common questions we can attend to these more efficiently.



Ray Macleod

Chair

For and on behalf of the Hume House Body Corporate Committee



FORMAL COMMERCIAL BUILDING CONTRACT

Highrise Maintenance Limited
40 Eskdale Road, Papakowhai, Porirua 5024
Phone: 021 440 102
Email: sam@highrisewaterproofing.co.nz
Web: www.highrisewaterproofing.co.nz

GST No: 136 071 963

REF No: _____ DATE: _____

A. Client's Details			
Type of Business: <input type="checkbox"/> Sole Trader <input type="checkbox"/> Trust <input type="checkbox"/> Partnership <input type="checkbox"/> Company			
Name <i>Client 1</i> :			
Trading Name:			
Physical Address:			Postcode:
Billing Address:			Postcode:
Phone No:	Fax No:	Mobile No:	
Email Address:			
Name <i>Client 2</i> :			
Trading Name:			
Physical Address:			Postcode:
Billing Address:			Postcode:
Phone No:	Fax No:	Mobile No:	
Email Address:			
<i>Client's Authorised Representative</i> (if any):			
Phone No:	Fax No:	Mobile No:	
Email Address:			

B. Contractor's Licence (copy must be shown to the Client)	
Licence No:	Expiry Date:
Category shown on licence:	

C. Description of the Works (brief description)												
<i>Note: a full description of the Works (including plans and specifications) must be attached as a separate Schedule.</i>												
Quote dated 23 rd June 2025												
<p>FAÇADE & GLAZING REMEDIATION – ORDER OF WORKS</p> <p>We would recommend that if the project were programmed to suit a budget availability that it has the following order of works. Please note this could also be broken down further into faces of the building or % of total task, #1 & #2 could also be swapped depending on urgency for the Bodycorp. We are open to discussion with the Bodycorp and are happy to work together to ensure that the project can move forward without undue strain on the available resources,</p>												
<p>Façade & Glazing Remediation – Proposed order / packaging of works for budgetary purposes</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">Package of Works - #1 (Or #2 depending on urgency)</th> <th style="text-align: left;">Price</th> </tr> </thead> <tbody> <tr> <td>Façade Remediation – Concrete Spalling</td> <td>\$7,365.51 + GST</td> </tr> <tr> <td>Façade Remediation – Concrete Cracking (High Build Membrane)</td> <td>\$24,833.57 + GST</td> </tr> <tr> <td>Façade Remediation – Concrete Cracking (Crack Injection)</td> <td>\$28,015.47 + GST</td> </tr> <tr> <th style="text-align: left;">Package of Works - #2 (Or #1 depending on urgency)</th> <th style="text-align: left;">Price</th> </tr> <tr> <td>Seismic Flashing – Preventative Maintenance Estimate Only</td> <td>\$2,302.63 + GST</td> </tr> </tbody> </table>	Package of Works - #1 (Or #2 depending on urgency)	Price	Façade Remediation – Concrete Spalling	\$7,365.51 + GST	Façade Remediation – Concrete Cracking (High Build Membrane)	\$24,833.57 + GST	Façade Remediation – Concrete Cracking (Crack Injection)	\$28,015.47 + GST	Package of Works - #2 (Or #1 depending on urgency)	Price	Seismic Flashing – Preventative Maintenance Estimate Only	\$2,302.63 + GST
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Façade Remediation – Concrete Cracking (Crack Injection)	\$28,015.47 + GST											
Package of Works - #2 (Or #1 depending on urgency)	Price											
Seismic Flashing – Preventative Maintenance Estimate Only	\$2,302.63 + GST											

Seismic Flashing – Preventative Maintenance Estimate Only	\$2,302.63 + GST
Package of Works - #3	Price
Glazing Remediation – External Corrosion & Putty (As Per Inspection)	\$79,294.59 + GST
Package of Works - #4	Price
Glazing Remediation – Paint Application	\$96,189.12 + GST
Package of Works - #5	Price
Façade Remediation – Paint Application	\$64,695.80 + GST
	\$302,696.69 + GST

D. Worksite Details

Worksite Address:

Postcode:

Lot No:

On RP / SP / BUP Number:

The Worksite is affected by the following Building Restrictions, Covenants or Easements (*Client* to personally detail):

The *Client* warrants to the *Contractor* that the *Client* is allowed to build on the Worksite specified herein, that the description of the Worksite above is correct and that all Building Restrictions, Covenants or Easements that may affect the Works to be undertaken under this Contract have been fully disclosed above.

E. Dates

Commencement Date: August 2025 (or anticipated commencement date if not known)

Expected Completion Date:

Building Completion Period (Days): (building period is in calendar days - not working days)

The Works are to be practically completed within the number of building period days stated (which is to include all calculable days allowed as referred to below), subject to any extension of the Contract is allowed under clause 9.2

If the commencement date is not known the intended commencement date is decided as follows:

The building period includes the following allowances for:

Calculable Delays:

Inclement weather or the effects thereof:

Weekends, public holidays:

Rostered days off

Days not generally available for carrying out Works:

Any other matter

Incalculable Delays:

The Works may be delayed due to the following reasons as the period of delay cannot be adequately estimated. (Reasons are to include specific causes and the general effects that the delay is likely to have on the carrying out of the Works)

Reasons (to be continued on a separate page if necessary):

N. Contract Consists of:

(Note: The *Contractor* must specify here if the connection, or the installation of any particular services e.g. gas, water etc. (which the *Contractor* is to pay for) are included in the *Price*)

1.	Building Contract
2.	Quotation: 152 The Terrace - Facade Remediation - 16th July 2025
3.	Drawings and Specifications
4.	Other:

1. Definitions

- 1.1 "**Contract**" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this *Contract*.
- 1.2 "**Contractor**" shall mean Highrise Group Limited, its successors and assigns or any person acting on behalf of and with the authority of Highrise Group Limited.
- 1.3 "**Client**" means the person/s, entities, strata, property manager or any person acting on behalf of and with the authority of the *Client* requesting the *Contractor* to provide the *Works* as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one *Client*, is a reference to each *Client* jointly and severally; and
 - (b) if the *Client* is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the *Client* is a part of a *Trust*, shall be bound in their capacity as a trustee; and
 - (d) includes the *Client's* executors, administrators, successors and permitted assigns.
- 1.4 "**Works**" shall mean all *Works* (including the supply of *Materials*) undertaken by the *Contractor* and described in this *Contract* and includes any advice or recommendations.
- 1.5 "**Materials**" shall mean *Materials* required to complete the *Works*.
- 1.6 "**Intended Use**" means a building product and the use thereof, for which the building product is intended to be, or is reasonably likely to be, associated with a building.
- 1.7 "**Non-Conforming Building Product**" means building products that are regarded as *Non-Conforming* for an *Intended Use* if, when associated with a building:
 - (a) the product is not, or will not be, safe; or
 - (b) does not, or will not, comply with the relevant regulatory provisions; or
 - (c) the product does not perform, or is not capable of performing, for the use to the standard it is represented to conform by or for a person in the chain of responsibility for the product.
- 1.8 "**Worksite**" means the address nominated by the *Client* to which the *Materials* are to be supplied by the *Contractor*.
- 1.9 "**Working Hours**" means the period between 7:30am and 4:00pm on any day except Saturday, Sunday, public holiday, or provincial anniversary day as observed in the province in which this *Contract* is applied.
- 1.10 "**Prime Cost Item**" shall mean an item that either has not been selected, or whose *Price* is not known, at the time this *Contract* is entered into and for the cost of supply and delivery of which the *Contractor* must make a reasonable allowance in the *Contract*.
- 1.11 "**Provisional Sum**" shall mean an estimate of the cost of carrying out particular *Works* under this *Contract* for which the *Contractor*, after making all reasonable inquiries, cannot give a definite *Price* at the time this *Contract* is entered into.
- 1.12 "**Confidential Information**" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this *Contract*, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "**Personal Information**" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.13 "**Cookies**" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including *Personal Information*) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Works via the website.**
- 1.14 "**Price**" shall mean the *Price* of the *Works* as agreed (plus any Goods and Services Tax ("**GST**") where applicable) between the *Contractor* and the *Client*.

2. Acceptance

- 2.1 The *Client* is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the *Client* places an order for or accepts the *Works*.
- 2.2 In the event of any inconsistency between the terms and conditions of this *Contract* and any other prior document or schedule that the parties have entered into, the terms of this *Contract* shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this *Contract* may only be amended in writing by the consent of both parties.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.5 None of the *Contractor's* agents or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the *Contractor* in writing nor is the *Contractor* bound by any such unauthorised statements.

2.6 Where the *Client* is a tenant (and therefore not the owner of the land and premises where the *Materials* are to be installed) then the *Client* warrants that full consent has been obtained from the owner for the *Contractor* to install the *Materials* on the owner's land and premises. The *Client* acknowledges and agrees that they shall be personally liable for full payment of the Price for all *Works* provided under this *Contract* and to indemnify the *Contractor* against any claim made by the owner of the premises (howsoever arising) in relation to the installation of the *Materials* and the provision of any related *Works* by the *Contractor* except where such claim has arisen because of the negligence of the *Contractor* when installing the *Materials*.

3. Errors and Omissions

3.1 The *Client* acknowledges and accepts that the *Contractor* shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the *Contractor* in the formation and/or administration of this *Contract*; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the *Contractor* in respect of the *Works*.

3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the *Contractor*; the *Client* shall not be entitled to treat this *Contract* as repudiated nor render it invalid.

4. Change in Control

4.1 The *Client* shall give the *Contractor* not less than fourteen (14) days prior written notice of any proposed change of ownership of the *Client* and/or any other change in the *Client's* details (including but not limited to, changes in the *Client's* name, address and contact phone or fax number/s, change of trustees or business practice). The *Client* shall be liable for any loss incurred by the *Contractor* as a result of the *Client's* failure to comply with this clause.

5. Variations

5.1 In the event that the *Client* requests a variation all such requests shall be made in writing. If the *Contractor* believes the variation will not require a variation to any permit and will not cause any delay, and will not add more than two percent (2%) to the Price then the *Contractor* may carry out the variation and the *Client* agrees to pay any variation to the Price, otherwise the *Contractor* will give the *Client* a written variation document detailing the *Works*, the amended Price, the estimated time to undertake the variation, and the likely delay, if any, and require written acceptance by the *Client* of the variation before commencing Work on the variation.

5.2 In the event that the *Contractor* requests a variation, the *Contractor* will, in writing:
(a) state the reason for the variation; and
(b) provide a full description of the variation; and
(c) state any effect the variation will have on the *Contract*, including but not limited to, the Price, completion date and whether further permits or authorisations are required.

5.3 Other than for the events outlined in clause 5.4 the *Contractor* shall obtain written acceptance by the *Client* of any variation submitted by the *Contractor* before commencing Work on the variation.

5.4 Where the *Works* involve additions or alterations to an existing building or structure then:
(a) the *Contractor* shall not be liable for any loss or damage suffered by the *Client* in relation to the *Works* where such loss or damage results from the state or condition of the *Client's* existing building or structure, and the effect of such state or condition on the *Works*, or the effect of the *Works* on the existing building or structure, could not reasonably have been foreseen by the *Contractor* during the course of the *Works*; and
(b) where as a result of opening up any part of the existing building or structure to carry out the *Works*, any additional or altered work is required because of non-standard construction or any substandard timber or other materials or because of any material which is required to be replaced or removed to carry out the *Works*, then the cost of any additional or altered work shall be borne by the *Client* and treated as a variation and the *Contract Price* adjusted accordingly.

6. Finance

6.1 If this *Contract* is conditional upon the *Client* obtaining a loan from a financial institution then they shall provide the *Contractor* with written confirmation of the loan approval within five (5) working days of the date specified in box J above.

6.2 In the event any such loan application is declined then the *Client* shall have the right to withdraw from this *Contract* subject to the *Client* providing the *Contractor* with written evidence within five (5) working days of the date specified in box J above that the loan was declined. Upon receipt of such evidence the *Contractor* shall refund the *Client* any deposit paid less any expenses incurred by the *Contractor* for any *Works* performed to date.

7. Security Monies

7.1 The *Client* shall deposit any security monies into an account at a financial institution mutually agreed between the *Client* and the *Contractor*. The account must be a joint account in the names of both the *Client* and the *Contractor* and withdrawals shall require the signature of both of those parties.

7.2 It is agreed that security monies shall be used to pay progress payments to the *Contractor* before any loan monies are used to pay progress payments.

7.3 In the event that the *Client* fails to pay any monies due to the *Contractor* or the *Contractor* terminates this *Contract* then the *Contractor* shall be entitled to security monies equivalent to any amount due and owing to the *Contractor*.

7.4 After payment of the final progress payment to the *Contractor* any security monies remaining in the account (including any interest) shall be the *Client's*.

8. Price and Payment

8.1 Time for payment for the *Works* shall be of the essence and will be stated on the invoice. ~~If no time is stated then payment shall be due seven (7) days following the date of the invoice.~~

- 8.2 Where no payment stages have been specified the *Contractor* may submit a detailed payment claim at intervals not less than one (1) month for *Works* performed up to the end of each month. The value of *Works* so performed shall include the reasonable value of authorised variations, whether or not the value of such variations has been finally agreed between the parties, and the value of *Materials* delivered to the *Worksite* but not installed.
- 8.3 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the *Client* and the *Contractor*.
- 8.4 The *Client* shall not be entitled to set off against, or deduct from the *Price*, any sums owed or claimed to be owed to the *Client* by the *Contractor* nor to withhold payment of any invoice because part of that invoice is in dispute unless the request for payment by the *Contractor* is a claim made under the Construction Contracts Act 2002.
- 8.5 The *Contractor* may in its discretion allocate any payment received from the *Client* towards any invoice that the *Contractor* determines and may do so at the time of receipt or at any time afterwards. On any default by the *Client* the *Contractor* may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the *Contractor*, payment will be deemed to be allocated in such manner as preserves the maximum value of the *Contractor's* Purchase Money Security Interest (as defined in the PPSA) in the *Works*.
- 8.6 The *Price* shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in the building contract schedule.

9. Completion of the Works

- 9.1 Subject to clause 9.2 it is the *Contractor's* responsibility to ensure that the *Works* start as soon as it is reasonably possible.
- 9.2 The *Works* commencement date will be put back and the building period extended by whatever time is reasonable in the event that the *Contractor* claims an extension of time (by giving the *Client* written notice) where completion is delayed by an event beyond the *Contractor's* control, including but not limited to:
- (a) restricted *Working Hours* (due to noise restrictions imposed at the *Worksite*);
 - (b) any force majeure event under clause 32.9, inclement weather and/or *Materials* supply delays;
 - (c) any failure by the *Client* to:
 - (i) make a selection; or
 - (ii) have the *Worksite* ready for installation; or
 - (iii) notify the *Contractor* that the *Worksite* is ready.
- 9.3 The *Works* shall be deemed to be completed when:
- (a) the *Works* carried out under this *Contract* have been completed in accordance with the plans and specifications set out in this *Contract*; and
 - (b) the *Client* either:
 - (i) receives a certificate of acceptance where the *Works* were urgent and completed without a building consent; or
 - (ii) in any other case, upon the issuance of a Notice of Practical Completion.
- 9.4 The *Client* shall inspect the *Works* upon completion and shall within one (1) month notify the *Contractor* of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The *Client* shall afford the *Contractor* an opportunity to inspect the *Works* within a reasonable time following delivery if the *Client* believes the *Works* are defective in any way. If the *Client* shall fail to comply with these provisions the *Works* shall be presumed to be free from any defect or damage. For defective *Works*, which the *Contractor* has agreed in writing that the *Client* is entitled to reject, the *Contractor's* liability is limited to either (at the *Contractor's* discretion) replacing the *Works* or repairing the *Works*.
- 9.5 Any time or date given by the *Contractor* to the *Client* is an estimate only. The *Contractor* shall not be liable for any loss or damage whatsoever due to failure by the *Contractor* to provide the *Works* (or any part of them) promptly or at all, where due to circumstances beyond the reasonable control of the *Contractor*.
- 9.6 The *Works* shall be deemed to be practically completed when, subject to clause 9.4, the *Works* carried out under this *Contract* have been completed without any omissions or defects in accordance with the plans and specifications set out in this *Contract*.

10. Worksite Access and Condition

- 10.1 The *Client* shall ensure that the *Contractor* has clear, unobstructed and free access to the *Worksite* at all times to enable them to undertake the *Works* (including carrying out *Worksite* inspections, gain signatures for required documents, and for the delivery and installation of the *Materials*); and
- (a) such access (where applicable) is suitable for high rise abseiling as may be deemed necessary by the *Contractor*; and
 - (b) the *Contractor* shall not be liable for any loss or damage to the *Worksite* (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas etc.) unless due to the *Contractor's* negligence; and
 - (c) remove any furniture, furnishings or personal goods from the vicinity of the *Works* and agrees that the *Contractor* shall not be liable for any damage caused to those items through the *Client's* failure to comply with this clause; and
 - (d) provide and have erected scaffolding to enable the *Works* to be undertaken (where in the *Contractor's* opinion it is deemed necessary). Any scaffolding must comply with industry safety standards and any person erecting the scaffolding shall be suitably qualified to ensure its safe and proper erection, and where necessary, shall hold a current certificate of competency and/or be fully licensed; and
 - (e) it is the *Client's* responsibility to provide the *Contractor*, while at the *Worksite*, with adequate access to available water, electricity; and
 - (f) if the *Works* are interrupted by the failure of the *Client* to adhere to the work schedule agreed to between the *Contractor* and the *Client*, any additional costs will be invoiced to the *Client* as a variation in accordance with clause 5; and
 - (g) fully disclose any information in writing, prior to the scheduled installation, that may affect the *Contractor's* installation procedures; and
 - (h) the *Client* agrees to be present at the *Worksite* when and as reasonably requested by the *Contractor* and its employees, contractors and/or agents.

- 10.2 **Worksite Inductions**
- (a) in the event the *Client* requires an employee or sub-contractor of the *Contractor* to undertake a *Worksite* induction during Working Hours, the *Client* will be liable to pay the hourly charges for that period. If any induction is needed to be undertaken prior to the commencement date then the *Client* shall be liable to pay the *Contractor's* standard (and/or overtime, if applicable) hourly labour rate; or
 - (b) where the *Contractor* is in control of the *Worksite*, the *Client* and/or the *Client's* third party contractors must initially carry out the *Contractor's* Health & Safety induction course before access to the *Worksite* will be granted. Inspection of the *Worksite* during the course of the *Works* will be by **appointment only** and unless otherwise agreed, in such an event the *Client* and/or third party acting on behalf of the *Client* must at all times be accompanied by the *Contractor*.
11. **Materials, Documents and Works Supplied by the Client**
- 11.1 The *Client*:
- (a) warrants that any documentation supplied for the *Works* and the content or methods therein are accurate and/or suitable to be used for the purpose for which the document/s were created;
 - (b) agrees that it is reasonable for the *Contractor* to rely on the documentation;
 - (c) agrees to supply the *Contractor* with as many copies of the documentation as the *Contractor* may reasonably need to perform the *Works* or to obtain any necessary approvals required for the *Works*.
- 11.2 The *Client* agrees that all materials and works supplied by the *Client* or the *Client's* third party subcontractors will:
- (a) be performed or supplied in accordance with all legislative requirements (including, but not limited to, the Building Act and Health and Safety legislation);
 - (b) be suitable for their inclusion into the *Works*;
 - (c) be completed to the *Contractor's* requirements.
- 11.3 The *Contractor* may where the *Contractor* believes that any materials or works supplied by the *Client* or any third party employed by the *Client* are defective require that the defective materials be replaced or require such works as are considered defective to be removed, repaired or replaced, the costs of which shall be the *Client's* responsibility.
- 11.4 Notwithstanding clause 11.3 the *Contractor* shall have no liability whatsoever in terms of the performance of, or suitability of, any materials or works supplied by either the *Client* or any third party employee of the *Client*.
- 11.5 In the event that the *Client* undertakes or employs any third party to undertake any works at the *Worksite* whilst the *Contractor* is undertaking *Works* then the *Client* must ensure that the *Client* and/or any third party so employed:
- (a) are appropriately licensed for the works being undertaken, and will provide evidence of the same upon request by the *Contractor*;
 - (b) do not interfere with the progress of *Works* by the *Contractor*;
 - (c) hold all relevant insurances as the *Contractor* is required to hold or are otherwise required under this *Contract*;
 - (d) co-operate will all requests or directives of the *Contractor* in relation to the timeliness and co-ordination of works to be performed;
 - (e) co-operate as may be reasonably expected with all other persons on the *Worksite*;
 - (f) discuss any *Worksite* issues directly with the *Contractor* and not with any of the *Contractor's* employees.
- 11.6 In the event that the *Client* or the *Client's* third party employees do not comply with clauses 11.3 or 11.5 then the *Contractor* may require the non-compliant party to either leave and/or stay off the *Worksite* as the *Contractor* may so direct.
- 11.7 If the *Client* breaches this clause then the *Contractor* may (at the *Contractor's* sole discretion) either:
- (a) carry on the *Works* without incorporation of any *Client* supplied materials or works;
 - (b) suspend the carrying out of the *Works* as per clause 29;
 - (c) terminate this *Contract* in accordance with clause 24.
12. **Risk**
- 12.1 If the *Contractor* retains ownership of the *Materials* nonetheless, all risk for the *Materials* passes to the *Client* on completion.
- 12.2 The *Contractor* shall be responsible for the *Works* from the date that the *Contractor* takes possession of the building *Worksite* until the date of Practical Completion recorded in the Notice of Practical Completion.
- 12.3 Notwithstanding the provisions of clause 12.1, where the *Contractor* requires that *Materials*, fittings and appliances, or plant and tools required for the *Works* be stored at the *Worksite*, the *Owner* shall supply the *Contractor* a safe area for storage and shall take all reasonable efforts to protect all items from possible destruction, theft or damage. In the event that any of the stored items are destroyed, stolen or damaged, then the cost of repair or replacement shall be the *Owner's* responsibility.
- 12.4 The *Client* acknowledges:
- (a) that *Materials* supplied (including but not limited to, paint, timber, roofing materials etc.) may:
 - (i) exhibit variations in texture, shade, colour, surface, finish, markings, graining, veining, and contain natural fissures, occlusions, and indentations. the *Contractor* will make every effort to match batches/samples of the *Materials* supplied in order to minimise such variations, but shall not be liable in any way whatsoever where such variations occur; and
 - (ii) fade or change colour over time; and
 - (iii) expand, contract or distort as a result of exposure to heat, cold, weather, therefore the *Contractor* will accept no responsibility for gaps that may appear during prolonged dry periods; and
 - (iv) mark or stain if exposed to certain substances; and
 - (v) be damaged or disfigured by impact or scratching.
 - (b) that all descriptive specifications, illustrations, drawings, data dimensions, and weights stated in the *Contractor's* fact sheets, price lists or advertising material are indicative only and that they have not relied on such information; and
 - (c) agrees that where the *Contractor* has performed temporary repairs that:
 - (d) the *Contractor* offers no guarantee against the reoccurrence of the initial fault, or any further damage caused; and
 - (e) the *Contractor* will immediately advise the *Client* of the fault and shall provide the *Client* with an estimate for the full repair required.

- 12.5 The *Client* agrees to indemnify the *Contractor* from any loss or damage caused by any other tradesmen during and after the completion of the *Works*. If the *Client* instructs the *Contractor* to rectify any damage caused by any other tradesman, this will become a variation to the original quotation and will be charged at the *Contractor* normal hourly rate.
- 12.6 The *Contractor* accepts no responsibility for any damage or defects in any *Materials* caused by movement and/or interference of the said *Materials*.
- 12.7 **Waterproofing**
- (a) All potential waterproofing surfaces are subject to an inspection by the *Contractor* prior to the commencement of the *Works*. In the event that the surface is deemed unsuitable, then the *Contractor* reserves the right to halt the *Works* until such time as it is agreed between the *Contractor* and the *Client* as to the additional cost in further preparation of the surface in order to make it fit for waterproofing. The additional cost shall be charged as a variation to the quotation as per clause 5.
- (b) It is the intention of the *Contractor* and agreed by the *Client* that it is the responsibility of the *Client* to ensure that:
- (i) any surface requiring waterproofing is suitable for the purpose. In the event that the *Client* requests the *Contractor* to prepare the surface for waterproofing, then at the *Contractor's* sole discretion a fee shall be charged for the *Works*, and shall become immediately due and payable;
- (ii) no other tradesmen work on the membrane applied to the surface, until the membrane is fully dried and cured to manufacturer's specifications. The *Contractor* shall not be liable for any costs, damages or loss however arising from the *Client's* failure to comply with this clause.
- 12.8 **Roofing**
- (a) The *Client* acknowledges and accepts that:
- (i) the *Contractor's* quotation for repairs to existing roofs shall be based only on the replacement of damaged roofing/cladding and/or any other roofing materials and shall not include the replacement of roofing/cladding and/or any other roofing materials with slight imperfections unless authorised by the *Client* prior to the commencement of the *Works*. If the *Client* requests the replacement of roofing/cladding and/or any other roofing materials that have slight imperfections but the *Contractor* does not deem to be defective or affect the integrity of the roof then this shall be a variation to the original quotation and clause 5 will apply; and
- (ii) no persons other than those authorised or employed by the *Contractor* are to walk on the treated roof surface for a period of twenty-one (21) days after completion of the job and at no time are any persons permitted to be in the areas of the *Works*. the *Contractor* shall not be liable for any loss, damages, injuries, or costs however arising resulting from the *Client's* failure to comply with this clause; and
- (iii) the *Contractor* accepts no liability for any subsequent loss or damage (including, but not limited to, internal water damage) to the *Client's* property which may occur during the cleaning process where such loss or damage is due to pre-existing faults or leaks; and
- 12.9 **Painting**
- (a) The *Client* acknowledges and accepts that:
- (i) the *Contractor* shall be indemnified for any claims made where colour fade occurs due to paint colours chosen by the *Client* that have less than a forty percent (40%) light-reflectance value (LRV) as these are inclined to fade more readily than those colours with a greater LRV; and
- (ii) any faults with underlying surfaces or structures may affect the finish of the completed *Works*; and
- (iii) where the *Contractor* has been requested to repair existing paint works and/or materials, evidence of that repair may be apparent after completion of the *Works*.
- (b) The *Contractor* shall not be liable whatsoever for:
- (i) any pre-existing damages discovered by the *Contractor* prior to the commencement of the *Works*. The *Client* will be notified of any such discovery in writing;
- (ii) inferior existing paintwork where the *Contractor's* paint has bonded to the existing paintwork and weakened the previous paint causing any kind of flake, crack, blemish, blistering or delamination;
- (iii) the quality of the *Works* if the *Client* does not follow the *Contractor's* recommendations as to the number of coats of paint required to obtain the final finish if the *Client* chooses to accept a reduced Price based on fewer coats of paint.
- 12.10 **Glazing**
- (a) Holes, cut outs and cutting of the *Materials* may weaken the strength of the *Materials* and although it's unlikely, cracking may occur. The *Contractor* accepts no responsibility against cracks occurring after such *Materials* (that are subject to holes and cut outs) are installed unless a toughened glass is used.
13. **Client's Responsibilities**
- 13.1 Prior to the *Contractor* commencing any *Works* the *Client* must advise the *Contractor* of the precise location of all known asbestos/hazardous materials ("**Asbestos/Hazardous Materials**") on the *Worksite* and clearly mark the same. Removal from the *Worksite* and the disposal of *Asbestos/Hazardous Materials* shall at all times be the *Client's* responsibility unless otherwise agreed in writing.
- 13.2 In the event that the *Contractor* discovers *Asbestos/Hazardous Materials* whilst undertaking any *Works*, the *Contractor* shall immediately advise the *Client* of the same and shall be entitled to suspend the *Works* pending a risk assessment in relation to those materials. The *Client* shall be liable for all additional costs incurred by the *Contractor* (howsoever arising) as a result of the discovery of *Asbestos/Hazardous Materials* and/or any suspension of *Works* in relation thereto.
- 13.3 The *Client* acknowledges and accepts that:
- (a) unless otherwise agreed, the *Client* shall supply power to within eight (8) metres of the project; and
- (b) the *Contractor* is only responsible for parts that are replaced by the *Contractor*, and in the event that other parts/*Materials*, subsequently fail, the *Client* agrees to indemnify the *Contractor* against any loss or damage to the *Materials*, or caused by the *Materials*, or any part thereof howsoever arising; and

- (c) the *Contractor* is entitled to suspend or terminate the supply of *Materials* or *Works* to the *Client* if there is a material change to the scope of work as a result of inaccurate plans, specifications or other information; and
- (d) the *Client* shall be liable for the *Contractor's* costs of de-mobilisation or re-mobilisation of any plant, equipment or staff to or from the *Worksite*, upon the re-commencement of the *Works* at the *Worksite*, if applicable; and
- (e) any structures to which the *Materials* are to be affixed are able to withstand the installation thereof and are of suitable capacity to handle the *Materials* once installed. If for any reason (including the discovery of asbestos, defective or unsafe structures or risk) that the *Contractor* reasonably form the opinion that the *Client's* premises is not safe for the *Works* to proceed then the *Contractor* shall be entitled to delay the provision of the *Works* (in accordance with clause 9.2) until the *Contractor* is satisfied that it is safe for the installation.

13.4 The *Contractor* is responsible for the removal of rubbish from or clean-up of the building/constructions site/s. The *Client* acknowledges that in the event asbestos, synthetic mineral fibres or any other toxic substances are discovered at the *Worksite* that it is their responsibility to ensure the safe removal of the same. The *Client* further agrees to indemnify the *Contractor* against any costs incurred by the *Contractor* as a consequence of such discovery. Under no circumstances will the *Contractor* handle the removal of asbestos product.

14. Underground Locations / Hidden Services

- 14.1 Prior to the *Contractor* commencing any work the *Client* must advise the *Contractor* of the precise location of all underground/hidden services on the *Worksite* and clearly mark the same. The mains and services the *Client* must identify include, but are not limited to, electrical services, gas services, sewer services, pumping services, sewer connections, sewer sludge mains, water mains, irrigation pipes, telephone cables, fibre optic cables, oil pumping mains, and any other services that may be onsite.
- 14.2 Whilst the *Contractor* will take all care to avoid damage to any services the *Client* agrees to indemnify the *Contractor* in respect of all and any liability claims, loss, damage, costs and fines as a result of damage to services not precisely located and notified as per clause 14.1.

15. Compliance and Consents

- 15.1 The *Client* shall be responsible for obtaining and paying for any necessary consents, approvals or certificates required for the *Works*, including those required subsequent to commencement of the *Works*.
- 15.2 The *Contractor* shall comply with the terms and conditions of all such consents and approvals in so far as such consents and approvals relate to the carrying out of the *Works*.
- 15.3 The *Client* shall be responsible for applying for and obtaining the Code Compliance Certificate(s) for the *Works*.
- 15.4 The *Contractor* shall provide the *Client* with all necessary information relating to the *Works* so that the *Client* may apply for a Code Compliance Certificate.
- 15.5 The *Client* and the *Contractor* shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the *Works* including any WorkSafe health and safety laws relating or any other relevant safety standards or legislation pertaining to the *Works*.
- 15.6 The *Contractor* shall upon installation ensure that all *Materials* are to be installed in a manner that is fully compliant with industry standards. If, for any reason, the *Client* specifically requires the *Materials* to be installed in any way which goes against the *Contractor's* recommendations and/or falls below industry standards; a request detailing that requirement must be made in writing to the *Contractor*. Accordingly, the *Contractor* offers no warranty in regards to the aforementioned.

16. Foundations Data and Latent Conditions

- 16.1 ~~This clause applies if the subject work proposed for this Contract:~~
 - (a) ~~requires the construction or alteration of footings, or a concrete slab, for a building; or~~
 - (b) ~~may adversely affect the footings of a building or a concrete slab forming part of a building.~~
- 16.2 ~~Before entering into the Contract, the Contractor must obtain the foundations data that is appropriate for the building Worksite, having regard to the following:~~
 - (a) ~~the Building Code of New Zealand;~~
 - (b) ~~the need for a drainage plan;~~
 - (c) ~~the need for engineer's drawings and computations;~~
 - (d) ~~the need for information on the fall of the land at the building Worksite.~~
- 16.3 ~~Nothing in clause 16.2 requires the Contractor to commission the preparation of foundations data to the extent the data already exists and it is reasonable for the Contractor to rely on the data.~~
- 16.4 ~~The Contractor must give a copy of any foundations data obtained by the Contractor in compliance with clause 15 to the Owner on payment by the Owner of the costs incurred by the Contractor in obtaining the data.~~
- 16.5 ~~Clause 16.4 does not apply to a Contractor for foundations data if:~~
 - (a) ~~the data is given to the Contractor by the Owner; or~~
 - (b) ~~the Contractor reasonably believes the Owner already has a copy of the data.~~
- 16.6 ~~The Contractor under this Contract cannot seek from the Owner an amount not already provided for in the Contract if:~~
 - (a) ~~the Contractor entered into the Contract before obtaining the foundations data under clause 16.2; and~~
 - (b) ~~the need for the additional amount could reasonably have been established, and the amount calculated, had the Contractor complied with clause 16.2.~~
- 16.7 ~~For clause 16.6, an amount is not taken to be provided for in this Contract only because the Contract contains a provision allowing for an increase to be made in the Contract Price.~~
- 16.8 ~~Nothing in clause 15 prevents the Contractor from claiming an amount not provided for in the Contract if:~~
 - (a) ~~the Contractor has complied with clause 16.2; and~~
 - (b) ~~the need for the additional amount cannot be established from the foundations data obtained by the Contractor.~~

~~16.9 The Contractor shall immediately on discovery of any latent condition at the Worksite advise the Owner of the nature of the condition and detail all the additional costs or Works required to rectify the condition (including any likely delays). Where the Owner is responsible under this Contract for additional costs due to latent conditions such notification shall be in the form of a variation which shall comply with clause 5 herein.~~

~~16.10 Where the Contractor is responsible for additional costs due to latent conditions the Contractor shall not be liable for those costs if the Works required to rectify the condition have already been allowed for in this Contract as a Provisional Sum.~~

17. Insurance

17.1 The Contractor shall maintain a public liability insurance policy indemnifying the Contractor against claims in respect of loss or damage against any property or injury or death or illness to any person arising out of the operations of the Contractor or any of its subcontractors in connection with the execution of the Works. The policy shall be in the joint names of the Contractor and the Client and shall be for an amount of not less than one million dollars (\$1,000,000) and shall be kept continuously in force until any Works required to remedy defects has been completed.

17.2 Where the Works involve physical change to an existing structure including additions or alterations Works then the Client shall arrange insurance:

- (a) for the Works against loss or damage for not less than the total of the Contract Price; and
- (b) for full replacement value against loss or damage to the Client's existing structure made available to enable performance of the Works or adjacent to the Works and against loss or damage to the Client's contents; and
- (c) against consequential loss arising from loss or damage to the Client's existing structures made available for the Works to be carried out

17.3 In the case of additions or alterations Works, insurance cover under clause 17.2 may be provided under the Client's existing policy of insurance in relation to the existing building or structure as an extension of such policy and:

- (a) shall be in the joint names of the Client, the Contractor and the mortgagee (if any); and
- (b) shall not be able to be cancelled or materially changed without giving at least ten (10) working days prior notification by the insurer in writing to the Contractor and the Client; and
- (c) shall include a waiver of the insurer's right to subrogation against the insurer parties.

17.4 For new dwellings the Contractor shall from the date that the Works are due to be commenced until the date that the Works are completed keep the Works insured against loss or damage. The insurance policy shall be in the names of the Client, the Contractor and the mortgagee (if any). Such cover shall also be maintained after completion if any defects require rectification by the Contractor and until such time as those Works have been completed.

18. Surplus Materials

18.1 Unless otherwise stated elsewhere in this Contract:

- (a) only suitable new Materials will be used; and
- (b) demolished Materials remain the Client's property; and
- (c) Materials that the Contractor brings to the Worksite which are surplus remain the property of the Contractor.

19. Title

19.1 It is the intention of the Contractor and agreed by the Client that ownership of Materials shall not pass until:

- (a) the Client has paid all amounts owing for the particular Materials; and
- (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.

19.2 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of Materials shall continue.

19.3 It is further agreed that:

- (a) where practicable the Materials shall be kept separate and identifiable until the Contractor shall have received payment and all other obligations of the Client are met; and
- (b) until such time as ownership of the Materials shall pass from the Contractor to the Client the Contractor may give notice in writing to the Client to return the Materials or any of them to the Contractor. Upon such notice the rights of the Client to obtain ownership or any other interest in the Materials shall cease; and
- (c) the Contractor shall have the right of stopping the Materials in transit whether or not delivery has been made; and
- (d) if the Client fails to return the Materials to the Contractor then the Contractor or the Contractor's agent may enter upon and into land and premises owned, occupied or used by the Client, or any premises as the invitee of the Client, where the Materials are situated and take possession of the Materials.

20. Warranty

20.1 To the extent required by statute, the Contractor warrants that:

- (a) that the building work will be carried out;
 - (i) in a proper and competent manner; and
 - (ii) in accordance with the plans and specifications set out in the Contract; and
 - (iii) in accordance with the relevant building consent.
- (b) that all Materials to be supplied for use in the building work;
 - (i) will be suitable for the purpose for which they will be used; and
 - (ii) unless otherwise stated in the Contract, will be new.
- (c) that the building work will be carried out in accordance with, and will comply with, all laws and legal requirements, including, without limitation, the Building Act 2004 and any regulations thereto.
- (d) that the building work will;

- (i) be carried out with reasonable care and skill; and
 - (ii) be completed by the date (or within the period) specified in the *Contract* or, if no date or period is so specified, within a reasonable time.
- (e) that the household unit, if it is to be occupied on completion of building work, will be suitable for occupation on completion of that building work.
- (f) if the *Contract* states the particular purpose for which the building work is required, or the result that the *Client* wishes the building work to achieve, so as to show that the *Client* relies on the skill and judgement of the other party to the *Contract*, that the building work and any materials used in carrying out the building work will;
- (i) be reasonably fit for that purpose; or
 - (ii) be of such a nature and quality that they might reasonably be expected to achieve that result.
- 20.2 For *Materials* not manufactured by the *Contractor* the warranty shall be the current warranty provided by the manufacturer of the Material. The *Contractor* shall be under no liability whatsoever except for the express conditions as detailed and stipulated in the manufacturer's warranty.
- 20.3 The *Contractor* will use reasonable endeavours to match new *Materials* to existing *Materials*. However, the parties recognise that it may not be possible to provide an exact matching of *Materials* and in such event there shall be no claim against the *Contractor*.
- 20.4 In the case of second hand *Materials*, the *Client* acknowledges that they have had full opportunity to inspect the same and that they accepted the same with all faults and that no warranty is given by the *Contractor* as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The *Contractor* shall not be responsible for any loss or damage to the *Materials*, or caused by the *Materials*, or any part thereof however arising.

21. Intellectual Property

- 21.1 Where the *Contractor* has designed, drawn or written plans or a schedule of *Works* for the *Client*, then the copyright in those plans, schedules, designs and drawings shall remain vested in the *Contractor*, and shall only be used by the *Client* at the *Contractor's* discretion. Under no circumstances may such designs, drawings and documents be used without the express written approval of the *Contractor*.
- 21.2 The *Client* warrants that all designs or instructions to the *Contractor* will not cause the *Contractor* to infringe any patent, registered design or trademark in the execution of the *Client's* order.
- 21.3 The *Client* agrees that the *Contractor* may use any documents, designs, drawings or *Materials* created by the *Contractor* for the purposes of advertising, marketing, or entry into any competition.

22. Default and Consequences of Default

- 22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of ~~two and a half percent (2.5%)~~ one percent (1%) per calendar month (and at the *Contractor's* sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 22.2 If the *Client* owes the *Contractor* any money the *Client* shall indemnify the *Contractor* from and against all costs and disbursements incurred by the *Contractor* in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the *Contractor's* collection agency costs, and bank dishonour fees).
- 22.3 Further to any other rights or remedies the *Contractor* may have under this *Contract*, if a *Client* has made payment to the *Contractor*, and the transaction is subsequently reversed, the *Client* shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the *Contractor* under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the *Client's* obligations under this *Contract*.
- 22.4 Without prejudice to the *Contractor's* other remedies at law the *Contractor* shall be entitled to cancel all or any part of any order of the *Client* which remains unperformed and all amounts owing to the *Contractor* shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the *Contractor* becomes overdue, or in the *Contractor's* opinion the *Client* will be unable to meet its payments as they fall due; or
 - (b) the *Client* has exceeded any applicable credit limit provided by the *Contractor*;
 - (c) the *Client* becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the *Client* or any asset of the *Client*.

23. Security and Charge

- 23.1 In consideration of the *Contractor* agreeing to supply the *Materials*, the *Client* charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the *Client* either now or in the future, to secure the performance by the *Client* of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 23.2 The *Client* indemnifies the *Contractor* from and against all the *Contractor's* costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the *Contractor's* rights under this clause.
- 23.3 The *Client* irrevocably appoints the *Contractor* and each director of the *Contractor* as the *Client's* true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 23 including, but not limited to, signing any document on the *Client's* behalf.

24. Cancellation

- 24.1 Without prejudice to any other rights or remedies the *Contractor* may have, if at any time the *Client* is in breach of any obligation (including those relating to payment and/or failure to remedy any breach in respect of this *Contract* within ten (10) working days of

receipt by the *Client* of such notice/s) then the *Contractor* may suspend the *Works* immediately. The *Contractor* will not be liable to the *Client* for any loss or damage the *Client* suffers because the *Contractor* has exercised its rights under this clause.

- 24.2 Subject to clauses 24.3 to 24.5 the *Client* may cancel this *Contract* if:
- (a) either:
 - (i) the *Price* rises by fifteen (15) percent or more after the *Contract* was entered into; or
 - (ii) the *Contract* has not been completed within 1½ times the period it was to have been completed by; and
 - (b) the reason for the increased time or cost was something that could not have been reasonably foreseen by the *Contractor* on the date the *Contract* was made.
- 24.3 For the purposes of clause 24.5 any increased time or cost that arises as a result of a Prime Cost Item or a Provisional Sum or that is caused by a variation is to be ignored in calculating any *Price* rise or increase in time.
- 24.4 To end the *Contract*, the *Client* must give the *Contractor* a signed notice stating that the *Client* is ending the *Contract* under this clause and giving the details of why the *Contract* is being ended.
- 24.5 If a *Contract* is ended under this clause, the *Contractor* is entitled to a reasonable *Price* for the *Work* carried out under the *Contract* to the date the *Contract* is ended. However, the *Contractor* may not recover more than the *Contractor* would have been entitled to recover under the *Contract*.

25. Retention Monies

- 25.1 Any Retention Monies applicable to this *Contract* are to be dealt with in accordance with section 18(a) to 18(i) of the Construction Contracts Act 2002, as detailed below:
- (a) all Retention Money must be held on trust by the *Client*, as trustee, for the benefit of the *Contractor*;
 - (b) Retention Money may be held in the form of cash or other liquid assets that are readily converted into cash; and
 - (c) a trust over Retention Money ends when—
 - (i) the money is paid to the *Contractor*; or
 - (ii) the *Contractor*, in writing, agrees to give up any claim to the money; or
 - (iii) the money ceases to be payable to the *Contractor* under the *Contract* or otherwise by operation of law.
 - (d) accounting:
 - (i) the *Client* must keep proper accounting records of all Retention Money held that—
 - (A) correctly records all dealings and transactions in relation to the money; and
 - (B) comply with generally accepted accounting principles; and
 - (C) are readily and properly auditable.
 - (e) the *Client* must make accounting records of the Retention Money available for inspection by the *Contractor* at all reasonable times and without charge;
 - (f) regulations may further prescribe methods of accounting for Retention Money;
 - (g) use of Retention Money:
 - (i) the *Client* must not appropriate any Retention Money to a use other than to remedy defects in the performance of the *Contractor's* obligations under the *Contract*;
 - (ii) Retention Money held in trust by the *Client*—
 - (A) does not need to be paid into a separate trust account; and
 - (B) may be commingled with other moneys.
 - (h) investment of Retention Money:
 - (i) Retention Money may be invested by the *Client* in accordance with the Trustee Act 1956 in relation to investment of trust funds;
 - (ii) if, upon the realisation of any investment, the amount received is—
 - (A) less than the amount invested, the *Client* must make up the difference between the amount invested and the amount realised; or
 - (B) more than the amount invested, the *Client* may retain the benefit of the amount that exceeds the amount invested; or
 - (C) the *Client* may retain the benefit of any interest earned on Retention Money on or before the date on which it is payable under the *Contract*.
 - (i) interest on late payment:
 - (i) interest on Retention Money is payable to the *Contractor* from the date on which it is payable under the *Contract* until the date on which it is paid;
 - (ii) the interest referred to in subclause (i) is payable—
 - (A) at the rate agreed under the *Contract*; or
 - (B) if the parties have not agreed a rate under the *Contract*, at the rate or rates prescribed in the applicable regulations.
 - (j) protection of Retention Money:
- 25.2 Retention Money—
- (i) is not available for the payment of debts of any creditor of the *Client* (other than the *Contractor*); and
 - (ii) is not liable to be attached or taken in execution under the order or process of any court at the instance of any creditor of the *Client* (other than the *Contractor*).
- (b) prohibited provisions
- (i) any term in a construction contract is void that purports to—
 - (A) make the payment of retention money conditional on anything other than the performance of the *Contractor's* obligations under the *Contract*; or
 - (B) make the date on which payment of retention money is payable later than the date on which the *Contractor* has performed all of its obligations under the *Contract* to the standard agreed under the *Contract*; or
 - (C) require the *Contractor* to pay any fees or costs for administering a trust under this subclause.

- (ii) any provision in a construction contract is void if the purpose or one of the purposes, of the provision is to avoid the application of any of the provisions of this subclause.

26. Privacy Policy

- 26.1 All emails, documents, images or other recorded information held or used by the *Contractor* is *Personal Information* as defined and referred to in clause 26.3 and therefore considered confidential. The *Contractor* acknowledges its obligation in relation to the handling, use, disclosure and processing of *Personal Information* pursuant to the Privacy Act 1993 ("the Act") including Part II of the OECD Guidelines and as set out in Schedule 5A of the Act and any statutory requirements where relevant in a European Economic Area "EEA" then the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The *Contractor* acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the *Clients* Personal Information, held by the *Contractor* that may result in serious harm to the *Client*, the *Contractor* will notify the *Client* in accordance with the Act and/or the GDPR. Any release of such *Personal Information* must be in accordance with the Act and the GDPR (where relevant) and must be approved by the *Client* by written consent, unless subject to an operation of law.
- 26.2 Notwithstanding clause 26.1, privacy limitations will extend to the *Contractor* in respect of *Cookies* where transactions for purchases/orders transpire directly from the *Contractor's* website. The *Contractor* agrees to display reference to such *Cookies* and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of *Personal Information* such as the *Client's*:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the *Contractor* when the *Contractor* sends an email to the *Client*, so the *Contractor* may collect and review that information ("collectively *Personal Information*")
- In order to enable / disable the collection of *Personal Information* by way of *Cookies*, the *Client* shall have the right to enable / disable the *Cookies* first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the *Contractor's* website.
- 26.3 The *Client* authorises the *Contractor* or the *Contractor's* agent to:
- (a) access, collect, retain and use any information about the *Client*;
 - (i) (including, name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the *Client's* creditworthiness; or
 - (ii) for the purpose of marketing products and services to the *Client*.
 - (b) disclose information about the *Client*, whether collected by the *Contractor* from the *Client* directly or obtained by the *Contractor* from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the *Client*.
- 26.4 Where the *Client* is an individual the authorities under clause 26.3 are authorities or consents for the purposes of the Privacy Act 1993.
- 26.5 The *Client* shall have the right to request the *Contractor* for a copy of the *Personal Information* about the *Client* retained by the *Contractor* and the right to request the *Contractor* to correct any incorrect *Personal Information* about the *Client* held by the *Contractor*.

27. ~~Personal Property Securities Act 1999 ("PPSA")~~

- 27.1 ~~Upon assenting to these terms and conditions in writing the *Client* acknowledges and agrees that:~~
- ~~(a) these terms and conditions constitute a security agreement for the purposes of the PPSA; and~~
 - ~~(b) a security interest is taken in all *Works* and/or collateral (account) — being a monetary obligation of the *Client* to the *Contractor* — for *Services* — that have previously been supplied and that will be supplied in the future by the *Contractor* to the *Client*.~~
- 27.2 ~~The *Client* undertakes to:~~
- ~~(a) sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which the *Contractor* may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;~~
 - ~~(b) indemnify, and upon demand reimburse, the *Contractor* for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any *Works* charged thereby;~~
 - ~~(c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the *Works* and/or collateral (account) in favour of a third party without the prior written consent of the *Contractor*; and~~
 - ~~(d) immediately advise the *Contractor* of any material change in its business practices of selling the *Works* and/or collateral (account) which would result in a change in the nature of proceeds derived from such sales.~~
- 27.3 ~~The *Contractor* and the *Client* agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.~~
- 27.4 ~~The *Client* waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.~~
- 27.5 ~~Unless otherwise agreed to in writing by the *Contractor*, the *Client* waives its right to receive a verification statement in accordance with section 148 of the PPSA.~~
- 27.6 ~~The *Client* shall unconditionally ratify any actions taken by the *Contractor* under clauses 27.1 to 27.5.~~

28. Consumer Guarantees Act 1993

- 28.1 If the *Client* is acquiring *Materials* for the purposes of a trade or business, the *Client* acknowledges that the provisions of the Consumer Guarantees Act 1993 do not apply to the supply of *Materials* by the *Contractor* to the *Client*.

29. Suspension of Works

- 29.1 Where the *Contract* is subject to the Construction Contracts Act 2002, the *Client* hereby expressly acknowledges that:
- (a) the *Contractor* has the right to suspend work within five (5) working days of written notice of its intent to do so if a payment claim is served on the *Client*; and
 - (i) the payment is not paid in full by the due date for payment in accordance with clause 8.1 and no payment schedule has been given by the *Client*; or
 - (ii) a scheduled amount stated in a payment schedule issued by the *Client* in relation to the payment claim is not paid in full by the due date for its payment; or
 - (iii) the *Client* has not complied with an adjudicator's notice that the *Client* must pay an amount to the *Contractor* by a particular date; and
 - (iv) the *Contractor* has given written notice to the *Client* of its intention to suspend the carrying out of construction work under the construction contract.
 - (b) if the *Contractor* suspends work it:
 - (i) is not in breach of *Contract*; and
 - (ii) is not liable for any loss or damage whatsoever suffered, or alleged to be suffered, by the *Client* or by any person claiming through the *Client*; and
 - (iii) is entitled to an extension of time to complete the *Contract*; and
 - (iv) keeps its rights under the *Contract* including the right to terminate the *Contract*; and may at any time lift the suspension, even if the amount has not been paid or an adjudicator's determination has not been complied with.
 - (c) if the *Contractor* exercises the right to suspend work, the exercise of that right does not:
 - (i) affect any rights that would otherwise have been available to the *Contractor* under the *Contract* and Commercial Law Act 2017 and/or any subsequent amendments or new legislation; or
 - (ii) enable the *Client* to exercise any rights that may otherwise have been available to the *Client* under that Act as a direct consequence of the *Contractor* suspending work under this provision;
 - (d) due to any act or omission by the *Client*, the *Client* effectively precludes the *Contractor* from continuing the *Works* or performing or complying with the *Contractor's* obligations under this *Contract*, then without prejudice to the *Contractor's* other rights and remedies, the *Contractor* may suspend the *Works* immediately after serving on the *Client* a written notice specifying the payment default or the act, omission or default upon which the suspension of the *Works* is based. All costs and expenses incurred by the *Contractor* as a result of such suspension and recommencement shall be payable by the *Client* as if they were a variation.
- 29.2 If pursuant to any right conferred by this *Contract*, the *Contractor* suspends the *Works* and the default that led to that suspension continues un-remedied subject to clause 24.1 for at least ten (10) working days, the *Contractor* shall be entitled to terminate the *Contract*, in accordance with clause 24.

30. Notices

- 30.1 Any written notice given under this *Contract* shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this *Contract*;
 - (c) by sending it by registered post to the address of the other party as stated in this *Contract*;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this *Contract* (if any), on receipt of confirmation of the transmission;
 - (e) if sent by email to the other party's current email address.
- 30.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post the notice would have been delivered.

31. Trusts

- 31.1 If the *Client* at any time upon or subsequent to entering in to the *Contract* is acting in the capacity of trustee of any trust ("*Trust*") then whether or not the *Contractor* may have notice of the *Trust*, the *Client* covenants with the *Contractor* as follows:
- (a) the *Contract* extends to all rights of indemnity which the *Client* now or subsequently may have against the *Trust* and the trust fund;
 - (b) the *Client* has full and complete power and authority under the *Trust* to enter into the *Contract* and the provisions of the *Trust* do not purport to exclude or take away the right of indemnity of the *Client* against the *Trust* or the trust fund. The *Client* will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
 - (c) the *Client* will not without consent in writing of the *Contractor* (the *Contractor* will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the *Client* as trustee of the *Trust*;
 - (ii) any alteration to or variation of the terms of the *Trust*;
 - (iii) any advancement or distribution of capital of the *Trust*; or
 - (iv) any resettlement of the trust property.

32. General

- 32.1 If any provision of this *Contract* shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 32.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Wellington District Court of New Zealand.
- 32.3 The *Contractor* shall be under no liability whatever to the *Client* for any indirect loss and/or expense (including loss of profit) suffered by the *Client* arising out of a breach by the *Contractor* of this *Contract*.

- 32.4 In the event of any breach of this *Contract* by the *Contractor* the remedies of the *Client* shall be limited to damages. Under no circumstances shall the liability of the *Contractor* exceed the *Price* of the *Works*.
- 32.5 The *Contractor* may not licence and/or assign all or any part of its rights and/or obligations under this *Contract* without the *Client's* consent.
- 32.6 The *Client* cannot licence or assign without the written approval of the *Contractor*.
- 32.7 The *Contractor* may elect to subcontract out any part of the *Works* but shall not be relieved from any liability or obligation under this *Contract* by so doing. Furthermore, the *Client* agrees and understands that they have no authority to give any instruction to any of the *Contractor* sub-contractors without the authority of the *Contractor*.
- 32.8 The *Client* agrees that the *Contractor* may amend their general terms and conditions for subsequent future contracts with the *Client* by disclosing such to the *Client* in writing. These changes shall be deemed to take effect from the date on which the *Client* accepts such changes, or otherwise at such time as the *Client* makes a further request for the *Contractor* to provide *Works* to the *Client*.
- 32.9 Neither party shall be liable for any default due to any act of God, war, terrorism, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 32.10 Both parties warrant that they have the power to enter into this *Contract* and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this *Contract* creates binding and valid legal obligations on them.

I certify that the above information is true and correct and that I have received, read and understand this FORMAL COMMERCIAL BUILDING CONTRACT, and agree to be bound by the terms and conditions herein. ***I agree that if I am a director/shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this Contract.***

Client 1:		
Signed:		Date:
Name:		Position:
ID: (Driver's Licence, Passport, etc.)		Date of Birth:
Client 2:		
Signed:		Date:
Name:		Position:
ID: (Driver's Licence, Passport, etc.)		Date of Birth:
Witness to Client's Signature:		
Signed:		
Name:		
Address:	Suburb/State:	Postcode:
Occupation:		
Contractor:		
Signed:		Date:
Name:		Position:



